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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 35

GEORGE T. GOGGIN, TRUSTEE IN BANKRUPTCY OF THE ESTATE OF KESSCO ENGINEERING CORPORATION, PETITIONER

v.

DIVISION OF LABOR LAW ENFORCEMENT, STATE OF CALIFORNIA, STATUTORY ASSIGNEE OF CERTAIN PRIOR WAGE CLAIMANTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court did not file a written opinion. It adopted the findings of fact and conclusions of law of the referee in bankruptcy (R. 5-9, 23). The opinion of the Circuit Court of Appeals (R. 36-39) is reported at 165 F. 2d 155.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 9, 1947. (R. 39-40.) The petition of the Trustee in Bankruptcy for a writ of certiorari was filed March 9, 1948, and was granted March 29, 1948. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (now 28 U.S.C. 1254), and under Section 24(c) of the Bankruptcy Act of July 1, 1898, c. 541, 30 Stat. 544, as amended by the Act of June 22, 1938, c. 575, 52 Stat. 840.

QUESTION PRESENTED

Where the Collector of Internal Revenue, on behalf of the United States of America, has recorded tax liens, and pursuant thereto and prior to bankruptcy has taken actual possession of personal property of a bankrupt, does Section 67(c) of the Bankruptcy Act require subordination of the United States' tax liens to wage claims by reason of the Collector's surrender of possession of such personal property to the receiver in bankruptcy under an agreement that, subject to "Trustee's expenses, including costs of sale", the proceeds from the sale of such property will be first devoted to the payment of the liens of the United States?

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 20-24.

STATEMENT

The facts are undisputed. Prior to the commencement of bankruptcy proceedings herein, on March 26, 1946, the Collector of Internal Revenue had filed notices of tax liens and had actual possession of all of the bankrupt's assets, having made a seizure to collect tax claims of the United States. (R. 6, 16, 17.) He had conducted a sale of these assets and had received bids thereon, but the sale was not completed because the price offered was unsatisfactory. A second sale was instituted but was abandoned when the assets of the bankrupt were relinquished to the receiver, as hereinafter set forth (R. 18). On March 26, 1946, the day this proceeding began, George T. Goggin, now Trustee, was appointed receiver in bankruptcy. Upon his appointment and qualification, conversations were had between the receiver and counsel in the office of the Collector as to turning over to the receiver the bankrupt's personal property in the Collector's possession. (R. 18). Pursuant to these conversations, the assets were turned over to the receiver who accepted the terms and conditions of a telegram from J. P. Wenchel, Chief Counsel of the Bureau of Internal Revenue, reading as follows (R. 7):

> Reference to telephone conversation today with Mr. Webb relative to Kessco Engineering Corporation, Bankrupt, no objection by this office to Collector relinquishing personal property to Trustee for sale. Government's lien to

attach to proceeds from sale subject to Trustee's expenses including costs of sale.

Later the receiver, in his capacity as trustee, sold the bankrupt's assets at public auction, pursuant to order of the Bankruptcy Court (R. 19), realizing approximately $31,206.20 (R. 7), which is less than the amount of the Government's lien claims for taxes (R. 6). Wage claims in the amount of $3,424.87 were filed for services rendered to the bankrupt within ninety days of bankruptcy (R. 21-22). The Division of Labor Law Enforcement of the State of California appeared on behalf of all wage claimants. (R. 7). Upon the Trustee's petition (R. 3-4), an order to show cause was duly issued herein directing the various claimants to show cause why the referee should not determine the priority and method of payment of the expenses of administration, tax claims, and labor claims (R. 4-5). After a hearing, the referee made the above findings of fact and ordered that the moneys in possession of the Trustee, consisting solely of the proceeds from the sale of the personal property previously in the possession of the Collector, be first used to pay the expenses of administration; and that after the payment of administration expenses the balance of the funds should be paid to the Collector on behalf of the United States in partial payment of the federal tax claims, which the referee concluded were a lien superior to all other claimants (R. 8, 16).

The Division of Labor Law Enforcement of the State of California filed a petition for review of the order of the referee (R. 10-15) and the matter was heard by the district court upon the referee's certificate (R. 15-19, 21-22). The district court adopted the findings of fact and conclusions of the referee (R. 23). Upon appeal by the Division (R. 30-31), the United States Circuit Court of Appeals for the Ninth Circuit, on December 9, 1947, reversed the order of the district court and directed payment of the wage claims before payment of the tax liens of the United States. Specifically, the court below held that, under Section 67(c) of the Bankruptcy Act, the relinquishment, after the filing of the bankruptcy petition, of possession of the bankrupt's personal property subject to the tax liens, required subordination of the tax liens to the wage claims (R. 36-39). The case is before this Court upon the Trustee's petition for certiorari which was granted on March 29, 1948.[1]

SUMMARY OF ARGUMENT

Prior to the commencement of the bankruptcy proceedings, the United States had perfected liens for unpaid federal taxes and had also taken actual possession of the bankrupt's personal property. Section 67(c) of the Bankruptcy Act subordinates tax liens on personal property to administration

[1] As the lien of the United States exceeds the proceeds available, it is the sole real party in interest in opposition to the wage claims. This brief is filed in support of the interest of the United States.

expenses and to limited wage claims unless such liens have been enforced by sale prior to the filing of the petition or are accompanied by possession of such personal property. The sole purpose of the alternative requirement of possession of the personal property subject to the lien, is to warn employees and potential petitioning creditors that such assets will not be available for payment of their claims and expenses. This purpose is fully served where the United States has taken actual possession of the bankrupt's personal property prior to the filing of the petition. Where, after the filing of the petition, the Collector delivers such personal property to the referee in bankruptcy for the purpose of a more advantageous sale and with the express understanding that the lien of the United States should attach to the proceeds, nothing in the language or purpose of Section 67(c) requires subordination of the lien of the United States. Considerations of fair and effective bankruptcy administration require that tax authorities should be encouraged to make the most advantageous sale of the bankrupt's personal property, rather than penalized for doing so.

ARGUMENT

I

AT THE COMMENCEMENT OF THE BANKRUPTCY PROCEEDINGS, THE PRIORITY OF THE LIEN OF THE UNITED STATES FOR TAXES OVER WAGE CLAIMS WAS CLEARLY ESTABLISHED.

Prior to the commencement of the bankruptcy proceedings, the United States had perfected its

lien for unpaid federal taxes. It was well settled under the Bankruptcy Act before its revision by the Act of June 22, 1938, the so-called Chandler Act, that liens against a bankrupt's property which were valid under either federal or state law remained valid on the property in the hands of the trustee after bankruptcy unless invalidated by some provision of the Act itself. See *Straton* v. *New*, 283 U. S. 318; *In re Knox-Powell-Stockton Co.*, 100 F. 2d 979 (C.C.A. 9th). This fundamental principle was not changed by the Chandler Act. *In re Van Winkle*, 49 F. Supp. 711, 713 (W.D. Ky.); *Reconstruction Finance Corp.* v. *Sun Lumber Co.*, 126 F. 2d 731 (C.C.A. 4th). Also, prior to the Chandler Act, all liens valid in bankruptcy had precedence over unsecured claims entitled to priority under Section 64 of the Act (*City of Richmond* v. *Bird*, 249 U. S. 174), and this general principle was preserved by the 1938 amendments except as modified by Section 67(c) (Appendix, pp. 21-22, *infra*). 4 Collier on *Bankruptcy* (14th ed. 1942), pp. 157-158. Subsection (b) of Section 67 of the Bankruptcy Act (Appendix, p. 21, *infra*), specifically provides that statutory liens for taxes owing to the United States may be valid against the trustee even though arising or perfected while the debtor is insolvent and within four months prior to bankruptcy.

Subsection (c) of Section 67 generally provides that statutory liens (including liens for federal taxes) on personal property not accompanied by possession of such property, though valid under

subsection (b) of Section 67, shall be subordinated to the administration expenses and wage claims enumerated in clauses (1) and (2) of Section 64(a).[2] It is undisputed that the Collector had seized all of the personal property of the bankrupt prior to the filing of the petition and that he had possession of the property on the date the bankruptcy petition was filed. Thus, on that date the lien of the United States was clearly unaffected by Section 67(c), and was therefore paramount to all unsecured claims—including administration expenses and wage claims.

II

WHERE, AFTER THE COMMENCEMENT OF BANKRUPTCY PROCEEDINGS, THE COLLECTOR RELINQUISHED POSSESSION OF PERSONAL PROPERTY SUBJECT TO THE TAX LIEN OF THE UNITED STATES TO THE TRUSTEE IN BANKRUPTCY FOR THE PURPOSE OF OBTAINING A MORE ADVANTAGEOUS SALE, UPON THE EXPRESS UNDERSTANDING THAT THE SALE PROCEEDS SHOULD BE SUBJECT TO THE LIEN, SECTION 67(c) SHOULD NOT BE INTERPRETED TO REQUIRE SUBORDINATION OF THE UNITED STATES' LIEN TO ADMINISTRATION EXPENSES AND WAGE CLAIMS.

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[2] It is the Government's position that subsections (b) and (c) do not apply to statutory liens perfected more than 4 months prior to bankruptcy. Consequently, federal tax liens perfected before that time are valid in bankruptcy even though unaccompanied by possession. In the present case, the total federal tax claims supported by liens perfected prior to 4 months before bankruptcy do not equal the sum to be distributed. This fact, however, ascertained from official U. S. Treasury records, does not appear in the record of this case. Consequently, the inapplicability of Section 67(c) to a portion of the federal taxes here in question was not raised below and the decisions of the trial and appellate courts do not refer to this factor. The issue here, therefore, proceeds on the basis of applying Section 67(c) to the full amount of the federal tax claims involved.

(A) The purpose of Section 67(c) is to give warning of the existence of liens, and this purpose is fully satisfied where the lien of the United States upon the bankrupt's personal property was accompanied by actual possession of such property at the commencement of the bankruptcy proceedings.

The date on which the petition in bankruptcy is filed is the time as of which the rights and priorities of creditors are determined. *United States* v. *Marxen*, 307 U. S. 200, 207-208; *Myers* v. *Matley*, 318 U. S. 622, 626. On that date, the right of the United States to satisfy its lien from the bankrupt's personal property was founded upon actual possession of such property. Nothing in Section 67(c) suggests that the tax lien of the United States is to be subordinated if personal property of the bankrupt which was in the possession of the United States at the commencement of the bankruptcy proceedings is later relinquished. The subsection provides that "Where not enforced by sale before the filing of a petition * * *, statutory liens, including liens for taxes or debts owing to the United States * * *, on personal property not accompanied by possession of such property, and liens whether statutory or not, of distress for rent shall be postponed in payment to [administration expenses and claims for wages earned within three months prior to the commencement of the proceedings up to $600 for each wage claimant]." Prior to the 1938 revision of the Bankruptcy Act,

tax liens otherwise valid took precedence over unsecured claims regardless of whether the Government had levied upon the property subject to its lien. This is still the rule with respect to real property subject to a tax lien. *In re Pennsylvania Central Brewing Co.*, 114 F. 2d 1010, 1012 (C.C.A. 3d), certiorari denied, 312 U. S. 685. Accordingly, it is to be presumed that the limited subordination first provided by Section 67(c), restricted as it is, in addition to rent liens, to statutory liens upon personal property only, was drafted to meet a specific problem. The legislative history of Section 67(c) indicates that such was the case.

Section 67(c) apparently originated in the amendments proposed by the National Bankruptcy Conference. In a Committee Print Analysis of H. R. 12889, 74th Cong., 2d Sess. (1936), prepared for the use of the House Committee on the Judiciary and containing amendments proposed by the Conference, the purpose of Section 67(c) is set forth (p. 212, note 1) and may be summarized as follows:[3] The policy of Section 64 is

[3] The full explanatory note reads: "Section 64 is declaratory of a policy that the costs and expenses in connection with a bankruptcy proceeding and its administration shall be first paid in distribution. It is a sound policy and is in accordance with the general principles well established in liquidation proceedings. But Section 67 of the Act does not apply the same limitation with respect to valid liens. The Supreme Court, in the case of *City of Richmond* v. *Bird*, 43 A.B.R. 260 (1919), resolved the conflict in the lower court decisions by holding that the priority provisions of Section 64 do not apply to liens valid under Section 67. The Fifth Circuit in the recent case of *City of Dallas* v. *Ryan*, 22 A.B.R. (N.S.) 378 (1933), following the law laid down in the *Bird* case, held that the

that bankruptcy administration expenses shall be paid first; however, liens must be satisfied ahead of all of the priority claims of Section 64. "Such claims, particularly tax liens, often consume the entire estate, leaving nothing for the payment of the costs and expenses of administration incurred in reducing the assets to cash. In many such cases the tax liens represent an accumulation of delinquent items covering a long period of time, without any attempt on the part of tax collectors to enforce payment prior to the bankruptcy proceeding. There is, therefore, need for a provision to protect the administration costs and expenses;

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priority provisions of Section 64 apply only to general unsecured claims, after the payment of specific liens and encumbrances; and that established liens obtained before bankruptcy and not invalidated by bankruptcy are not affected by that section.

"It is significant that in recent years state legislatures have been enacting special legislation in favor of tax claims, public debts, and a variety of private claims. Statistics in the bankruptcy cases show that the effective administration of the bankruptcy law has seriously suffered therefrom. Such claims, particularly tax liens, often consume the entire estate, leaving nothing for the payment of the costs and expenses of administration incurred in reducing the assets to cash. In many such cases the tax liens represent an accumulation of delinquent items covering a long period of time, without any attempt on the part of tax collectors to enforce payment prior to the bankruptcy proceeding.

"There is therefore need for a provision to protect the administration costs and expenses; and similar considerations apply to wage claims. Accordingly we have selected, from among the priorities fixed by Section 64 (as revised), these particular items for protection. However, by reason of the historical development and the inherent differences existing in the incidents attaching to real and personal property, it would seem advisable to restrict the remedy thus provided to liens on personal property, where such liens have not been enforced by sale prior to bankruptcy."

and similar considerations apply to wage claims." Thus "To afford protection to administrative costs and expenses and to wage claims, the authors of subdivision b [of Section 67], which expressly reaffirmed the validity of statutory liens, collaborated in a limited subordination of those liens". 4 Moore's Collier on *Bankruptcy* (14th ed.), 163-164.

It is significant to note that in an earlier draft of the recommendations of the National Bankruptcy Conference (House Judiciary Committee Print of May 15, 1935) in which this explanation first appears, tax liens on personal property would have been subordinated to administration expenses and wage claims if "not enforced by sale prior to bankruptcy" (pp. 175-176). This original proposal would have subordinated the tax lien where the personal property subject to the lien and already in possession of the Collector had not been sold prior to the filing of the petition. In that form, the saving exception for liens "enforced by sale" might reflect a policy of subordinating all tax liens to administration expenses and wage claims except to the extent necessary to protect innocent purchasers of the property.

The subsequent revision to save from subordination tax liens on personal property "accompanied by possession of such property" is nowhere explained, but it obviously adds a further condition under which there is to be no subordination of tax liens. As finally enacted, possession

prior to bankruptcy of personal property subject to the tax lien is as effective as the sale of such property to save the lien from subordination to administration expenses and wage claims. The purpose of this change appears to be independent of the aim to protect innocent purchasers where there has been a sale. That possession of personal property subject to a lien will save the lien from subordination suggests that the purpose of the possession requirement is to give notice (beyond the constructive notice of filing) that the property levied upon will not be available to satisfy administration expenses and wage claims. This function of possession as giving notice to potential petitioning creditors and employees is fulfilled by the time bankruptcy proceedings are commenced. Thus, nothing in the purpose and history of Section 67(c), as set forth above, suggests any exception to the general rule that rights are fixed as of the date of filing of the petition, or that the lien of the United States supported by actual possession on that date can thereafter be deprived of its status as a lien without the consent of the United States. This conclusion is confirmed by Weinstein, *The Bankruptcy Law of 1938* (1938), p. 145, ~~when~~ former one of the draftsmen of the Conference amendments states that "in respect even to personal property, the provisions [of Section 67(c)] are applicable only where the property has not been reduced to possession or where the liens have not been enforced by sale prior to bankruptcy."

The only case cited by the court below was *City of New York* v. *Hall*, 139 F. 2d 935 (C.C.A. 2d), as to which the court said, "We agree with the Second Circuit * * * in the holding that 'possession' as used in Section 67(c) means actual possession, the purpose being to protect and give warning to creditors. * * * Here we have a definite statutory provision based upon a well-understood reason limiting this lien to the actual possession of the property" (R. 38-39). However, the facts of that case, far from supporting the decision below, illustrate perfectly the more limited purpose of Section 67(c). There the City asserted in the bankruptcy proceeding a lien for taxes for seven years, although it had made no levy upon the bankrupt's personal property prior to the filing of the bankruptcy petition. Judge Frank there stated (p. 936):

> Whether steps taken pursuant to State "law" are sufficient to constitute "possession" under 67, sub. c, is a question of Federal "law". That conduct must adequately warn potential petitioning creditors of the existence of the lien. The City's action did not satisfy that test.

Obviously, the Second Circuit was simply holding that actual possession *at the time of bankruptcy* was necessary to avoid subordination of the tax liens. The clear implication of the decision is that Section 67(c) saves from subordination tax liens on personal property where the Government's

possession of the property gives notice to "*potential petitioning creditors* of the existence of the lien."

Where the taxing authority prior to bankruptcy takes actual possession of the personal property subject to its lien, other creditors and employees are warned that in the event of bankruptcy proceedings they cannot obtain reimbursement of their expenses (Section 64(a)(1)) or payment of their wage claims from such property. This notice or warning, to be effective, must consist of actual possession of the personal property prior to the filing of the petition. Once a bankruptcy petition has been filed, the requirement of actual possession has served its purpose; thereafter, neither the petitioning creditors nor wage claimants are misled or damaged in any way if the United States, for good reasons, arranges for sale by the trustee in bankruptcy of the bankrupt's property subject to its lien and which was in its possession when the petition was filed.

(B) *Sound considerations of business judgment and bankruptcy administration warranted the arrangement of sale by the trustee of the personal property subject to the lien.*

It should be noted at the outset that if the holding of the Court of Appeals below is permitted to stand it will thwart the release of physical possession of assets in the hands of the Collector of Internal Revenue for purposes of effecting a more

advantageous sale of the property, since the Collector has no authority to take any action which will result in a release or impairment of the lien of the United States for taxes. At the commencement of the bankruptcy proceeding, this lien was perfected and accompanied by possession of the bankrupt's personal property and was therefore paramount to all unsecured claims. Section 3671 of the Internal Revenue Code, which is here *in pari materia* with Section 67(c) of the Bankruptcy Act, provides that the lien of the United States for taxes "shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time". Congress has prescribed in detail the conditions under which a lien of the United States may be released. See Sections 3673-3676 of the Internal Revenue Code. None of these conditions exists here.

In any event, the Collector's actual possession of the personal property subject to the tax lien was not casually relinquished; rather, the property was turned over to the trustee pursuant to an express agreement that the sale proceeds should be subject to the lien. Consequently, whatever effect a casual release of possession by the Collector might be held to have, plainly in this case, where the release of possession was made on express conditions preserving the rights of the United States, there is no basis for inferring that its priority was waived. See *Petition of International Harvester Co.*, 9 F. 2d 299 (C.C.A. 6th), in which the court

held that a waiver of a prior lien could not be implied solely from the fact that the lienholder who had acquired possession of the property prior to bankruptcy surrendered possession to the receiver or trustee after the filing of the bankruptcy petition.

The action of the Collector in releasing the property was prompted by sound considerations of business judgment and bankruptcy administration. After the Collector had taken possession of the bankrupt's personal property, but prior to the filing of the bankruptcy petition, the Collector had conducted a sale of the property which was not completed because the bids were unsatisfactory. A second sale was being advertised by the Collector when he entered into the sale arrangement with the trustee which is here involved. It was the duty of the Collector to realize as much as possible from the sale of property so as to satisfy the claim of the United States for taxes. In many cases, since tax claims are not discharged by bankruptcy (Section 17 of the Bankruptcy Act), the bankrupt, if an individual, would be benefited by a sale which will reduce the tax claim as much as possible. The realization of a greater amount from the sale of assets would profit other lienors directly and all other claimants indirectly. If there are other assets in the bankrupt estate, an advantageous sale of the property subject to the tax lien benefits the general creditors to the extent that the tax claim is satisfied without recourse to such other assets.

Accordingly, where the Collector concludes that the trustee can make a more advantageous sale of the bankrupt's personal property, the exercise of such business judgment should be encouraged, rather than penalized by depriving the United States of the benefit of its lien. The result of the decision below will be to require all tax authorities (as well as the holders of other statutory liens) themselves to sell personal property levied upon to satisfy liens, so as to preserve the prior status of their liens, without regard to the possibility of a more advantageous sale by the trustee. Nothing in the Bankruptcy Act requires such a result.

To give effect to the agreement under which the sale here was made would be in accordance with established bankruptcy procedure. It has long been recognized that bankruptcy courts have power, upon the trustee's petition, to order the sale of property free from liens attaching to it and to transfer the liens to the proceeds of sale. *Van Huffel* v. *Harkelrode*, 284 U. S. 225; 4 Collier, *supra*, pp. 1597-1598. The lienholder commonly gives his consent, expressed or implied, to such sales and it is usual for the lienholder to bear his share of the cost of administration. 4 Collier, pp. 1604-1616. It is difficult to understand why the Trustee could not undertake to do precisely the same thing by arrangement with the lienholder having the prior right to the proceeds. It is true that the Bankruptcy Court had not authorized the Trustee to do so at the time the agreement was made but

the arrangement was later approved and adopted by the court when the order of the referee was affirmed by the court.

CONCLUSION

The decision of the Circuit Court of Appeals should be reversed with direction that it affirm the decision of the District Court.

Respectfully submitted,

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OCTOBER 1948.

APPENDIX

Bankruptcy Act of 1898, c. 541, 30 Stat. 544, as amended by the Act of June 22, 1938, c. 575, 52 Stat. 840, Sec. 1:

SEC. 64. *Debts Which Have Priority.*—a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow; (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis,

whole or part time, whether or not selling exclusively for the bankrupt; * * *.

* * * *

(11 U.S.C. 1940 ed., Sec. 104.)

SEC. 67. *Liens and Fraudulent Transfers.*— * * *

* * * *

b. The provisions of section 60 of this Act to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or any State or subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition in bankruptcy or of the original petition under chapter X, XI, XII, or XIII of this Act, by or against him. Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court.

c. Where not enforced by sale before the filing of a petition in bankruptcy or of an original petition under chapter X, XI, XII, or

XIII of this Act, though valid under subdivision b of this section, statutory liens, including liens for taxes or debts owing to the United States or to any State or subdivision thereof, on personal property not accompanied by possession of such property, and liens whether statutory or not, of distress for rent shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision a of section 64 of this Act, and, except as against other liens, such liens for wages or for rent shall be restricted in the amount of their payment to the same extent as provided for wages and rent respectively in subdivision a of section 64 of this Act.

* * * *

(11 U.S.C. 1940 ed., Sec. 107.)

Internal Revenue Code:

SEC. 3671. *Period of Lien.*

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1940 ed., Sec. 3671.)

SEC. 3673. *Release of Lien.*

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) *Liability Satisfied or Unenforceable.*—The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

(b) *Bond Accepted.*—There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations.

(26 U.S.C. 1940 ed., Sec. 3673.)

SEC. 3674. *Partial Discharge of Property.*

(a) *Property Double the Amount of the Liability.*—Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(b) *Part Payment.*—Subject to such regulations as the Commissioner, with the ap-

proval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States.

(26 U.S.C. 1940 ed., Sec. 3674.)

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